IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1260 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHYAMPRAKASH SPINNING MILLS LTD
Versus
COMMISSIONER OF SALES TAX

Appearance:
1. Special Civil Application No. 1260 of 2001
MR ANIP A GANDHI for Petitioner No. 1-2
MR UR BHATT, AGP, for Respondent No. 1-2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The petitioner No.1 - Shyamprakash Spinning Mills Ltd. (hereinafter referred to as `the petitioner-company') has filed BIFR Case No.192 of 1997 under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as `the SICA'). The BIFR has registered the petitioner-company as a sick company and the BIFR is considering the scheme for rehabilitation of the petitioner-company. The company is, therefore, claiming protection against the coercive recovery of sales tax dues in view of the provisions of section 22 of the SICA.

2. The stand of the Sales Tax Department represented by Mr. U.R. Bhatt, learned AGP is that when the petitioner -company is recovering sales tax from its customers, the petitioner cannot claim any protection against the coercive recovery.

3. In the rejoinder affidavit dated 28-4-2001 filed on behalf of the petitioner-company, it is stated that the petitioner company is paying sales tax dues for the period from 1-1-1999 onwards as the BIFR had put the cut off date of 31-12-1998 for quantifying the liabilities of the petitioner-company for preparing the scheme of revival and rehabilitation of the company.

Mr.Gandhi for the petitioner-company further states that the petitioner-company has been paying the sales tax dues from 1-1-1999 onwards.

4. In view of the above statement and in view of the provisions of section 22 of the SICA, it is obvious that the respondent -authorities are required to be restrained from making coercive recovery of the sales tax dues from the petitioner-company for the period prior to 1-1-1999.

In view of the above direction, the impugned orders at Annexures `I', `H', `L' and `M' dated 15-11-2000, 25-9-2000, 5-2-2000 and 5-2-2000 respectively are quashed and set aside with the direction that the respondents shall not make any coercive recovery of the sales tax dues from the petitioner-company prior to 1-1-1999 except in accordance with the scheme which may be sanctioned by the BIFR or except in accordance with the previous permission of the BIFR. The petitioner is also directed to inform the Sales Tax Department about the progress and/or failure of the scheme before the BIFR and the final outcome of the proceedings before the BIFR, as and when they stand concluded before the BIFR.

5. The petition accordingly stands disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-